

BOARD:  
Allen Amsler  
Chairman  
Mark S. Lutz  
Vice Chairman  
R. Kenyon Wells



Catherine B. Templeton, Director

*Promoting and protecting the health of the public and the environment*

BOARD:  
Charles M. Joye II, P.E.  
L. Clarence Batts, Jr.  
Ann B. Kirol, DDS  
John O. Hutto, Sr., MD

## **Minutes of the March 14, 2013, meeting of the**

### **South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, March 14, 2013, at 10:00 a.m. in the Board Room of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman  
Member-at-Large

Mark S. Lutz, Vice-Chairman  
1<sup>st</sup> District

R. Kenyon Wells  
2<sup>nd</sup> District

Charles M. Joye, II, P.E.  
3<sup>rd</sup> District

L. Clarence Batts  
4<sup>th</sup> District

Ann B. Kirol, DDS  
5<sup>th</sup> District

John O. Hutto, Sr., MD  
6<sup>th</sup> District

Also in attendance were Catherine Templeton, Director; W. Marshall Taylor, Jr., General Counsel; Lisa Lucas Longshore, Clerk; Department staff and members of the public. (Attachment 0-2)

*Mr. Amsler stated notice of this meeting had been provided to all persons, organizations and news media, which have requested notification, as required by Section 30-4-80(e) of the South Carolina Code of Laws.*

Chairman Amsler welcomed Mr. Chuck Joye from Anderson to the Board as the representative of the 3<sup>rd</sup> Congressional District.

**Item 1: Board Minutes of the February 14 meeting and February 26 conference call**  
(Attachment 1-1)

*Mr. Batts moved, seconded by Mr. Lutz, to approve the minutes as submitted for the February 14 meeting and February 26 conference call. The Board voted and Motion carried.*

**Item 2: Administrative and Consent Orders issued by Environmental Quality Control**  
(Attachment 2-1)

Ms. Robin Stephens, Assistant to the Deputy Director, EQC, stated thirty-seven (37) Consent Orders and one (1) Administrative Order had been issued with total penalties of \$63,530.

After discussion, *the Board accepted this item as information.*

**Item 3: Orders issued by the Office of Ocean and Coastal Resource Management**  
(Attachment 3-1)

Ms. Carolyn Boltin-Kelly, Office of Ocean and Coastal Resource Management, stated one (1) Administrative Order had been issued with a penalty of \$1,000.

After discussion, *the Board accepted this item as information.*

**Item 4: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation** (Attachment 4-1)

Ms. Melinda Bradshaw, Health Regulation Liaison, stated two (2) Consent Orders had been issued without assessed penalties.

After discussion, *the Board accepted this item as information.*

**Item 5: Status Report – Environmental Fees and Time Frames**

*Chairman Amsler announced this item had been withdrawn from the agenda.*

**Item 6: Public Hearing and Request for Final Approval – Proposed Amendments of Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan (SIP), State Register Document No. 4330, Legislative review is not required** (Attachment 6-1)

Mr. Robbie Brown, Director, Division of Air Assessment, Innovation and Regulation, presented this item.

EPA promulgates amendments to 40 CFR Parts 60, 63, and 72 throughout each calendar year. Federal amendments in 2011 included new and revised New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, and Acid Rain Program provisions. The Department proposed to amend Regulations

61-62.60, 61-62.63, and 61-62.72 to incorporate by reference the federal amendments published from January 1, 2011, through December 31, 2011. One of the NSPS rules that the Department proposes to adopt is the rule entitled *Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units* (SSI Rule) (76 FR 15372, March 21, 2011). Section 129 of the Clean Air Act requires that states develop plans, called "Section 129 Plans," to implement and enforce incinerator rules, including the SSI Rule. As a part of these regulatory revisions, the Department proposes to revise Regulation 61-62.60 to incorporate the SSI Rule, which, along with a certification letter to EPA, would constitute part of the Section 129 Plan for the SSI Rule.

The Department proposed to make revisions that correct errors in earlier amendments required to maintain compliance with federal law. First, the Department proposed to amend Regulation 61-62.5, Standard 7.1, *Nonattainment New Source Review (NSR)*, to incorporate a federally required provision on emissions offsets, as required by the federal rule entitled *Approval and Promulgation of Implementation Plans; South Carolina; Prevention of Significant Deterioration and Nonattainment New Source Review Rules* (73 FR 31369, June 2, 2008). Second, the Department proposed to amend Regulation 61-62.96, *Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program*, to incorporate a provision in the definition of "commence operation," as required by the federal rule entitled *Approval and Promulgation of Air Quality Implementation Plans; South Carolina; Clean Air Interstate Rule* (74 FR 53167, October 16, 2009).

Pursuant to 73 FR 31369, 31370 (June 2, 2008), the proposed changes to Regulation 61-62.5, Standard 7.1 are federally mandated. Pursuant to 74 FR 53167 (October 16, 2009), the proposed changes to Regulation 61-62.96 are federally mandated. All other rules are being incorporated by reference. Therefore, pursuant to S.C. Code Section 1-23-120(H)(1), legislative review is not required.

A public hearing was conducted and no one in attendance spoke on this regulation amendment. (Attachment 6-2)

After discussion, based on the information provided, ***Dr. Kirol moved, seconded by Mr. Batts, to find for the need and reasonableness of the proposed regulations and SIP and approve them for publication in the State Register as a final regulation. The Board voted and Motion carried.***

A verbatim transcript of these proceedings is included as part of the record. (Attachment 6-3)

**Item 7: Handling of Requests for Review requiring action by April 11, 2013** (Attachment 7-1)

After discussion, ***Mr. Batts moved, seconded by Mr. Lutz, not to conduct a final review conference on Docket No. 13-RFR-06, Lowe Wild Dunes Investor, LP. The Board voted and the Motion carried.***

After discussion, *Mr. Batts moved, seconded by Mr. Wells, not to conduct a final review conference on Docket No. 13-RFR-07, McMillian's Community Care Home. The Board voted and the Motion carried.*

After discussion, *Dr. Kirol moved, seconded by Mr. Batts, not to conduct a final review conference on Docket No. 13-RFR-09, Heather Shuman. The Board voted and the Motion carried.*

**Item 8: Final Review Conference – Docket No. 13-RFR-04, Re: Issuance of Permit Number 19,635-AG to P&W Poultry for the construction and operation of a No-discharge Agricultural Facility (Attachment 8-1)**

Mr. Taylor introduced the matter to the Board. Mr. Stephen Hightower represented the Department staff. Mr. Robert Guild represented the Requestors, Mr. Paul Felker and Mrs. Ruth Ann Felker. Mr. Michael Wise spoke on behalf of the applicant, P&W Poultry.

After presentations by parties and discussion with the Board, *Mr. Lutz moved, seconded by Dr. Kirol, to go into Executive Session for the purpose of obtaining legal advice relating to the matter being discussed. The Board voted and Motion carried.*

*Mr. Amsler announced the Board was back in session and while in Executive Session, no actions were taken.*

After further discussion, *Dr. Hutto moved, seconded by Mr. Batts, to allow the permit with the condition that the permit require a 400' buffer area as illustrated on the aerials and require the applicant have an engineer review, design, and certify a vegetated buffer plan and that plan be submitted for review and approved by the Department before construction could begin on facility. The Board voted and Motion carried.*

**Item 9: Final Review Conference – Docket No. 13-RFR-05, Letter reversing the agency decision on Permit Number OCRM-06-400-F stating the lot does not meet the regulatory definition of waterfront lot.**

*Mr. Amsler announced this Final Review Conference had been continued until the April 11 meeting.*

**Item 10: Agency Affairs**

Director Templeton briefed the Board on the following issues:

- Update on 2013-2014 Budget
- Permitting Central
- B&CB Vulnerability Assessment.

**Item 11: Legal Report**

Mr. Taylor presented the proposed Final Review Procedure and recommended the Board to adopt the policy effective April 1, 2013.

After brief discussion, ***Mr. Batts moved, seconded by Dr. Kirol, to accept the procedures as submitted and adopt them as policy effective April 1, 2013. The Board voted and Motion carried.***

Mr. Taylor then briefed the Board on the Supreme Court ruling in the Kiawah Development Partners (KDP) matter.

***Mr. Batts moved, seconded by Dr. Kirol, to go into Executive Session for the purpose of discussion of a matter under the attorney-client privilege and discussion of personnel issue. The Board voted and the motion carried.***

*Mr. Amsler announced the Board was back in session and while in Executive Session, no actions were taken.*

Mr. Amsler adjourned the meeting.

All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

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Mark S. Lutz, Vice-chairman

Minutes approved this 11<sup>th</sup> day of April 2013.

ATTEST:

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Allen Amsler, Chairman

Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes of February 14 meeting and February 26 conference call
- 2-1 Administrative and Consent Orders issued by EQC
- 3-1 Orders issued by Ocean and Coastal Resource Management
- 4-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 6-1 Public Hearing and Request for Final Approval – Proposed Amendment R.61-62, Air Pollution Control Regulations and Standards
- 6-2 Public Hearing sign-in sheet
- 6-3 Verbatim Transcript
- 7-1 Handling of Requests for Final Review requiring action by April 11, 2013
- 8-1 Final Review Conference – Docket No. 13-RFR-04, P&W Poultry
- 11-1 Final Review Procedure